

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ROXANNE EBERHART,

Appellant,

v.

UNIVERSITY OF WASHINGTON,

Respondent.

) Case No. DISM-02-0062

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the Harborview Medical Center Personnel Office, Seattle, Washington, on June 19, 2003.

1.2 **Appearances.** Appellant Roxanne Eberhart was present and was represented by Edward Earl Younglove III, Attorney at Law, of Parr & Younglove, P.L.L.C. Jeffrey W. Davis, Assistant Attorney General, represented Respondent University of Washington.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for just cause for “impersonating a working Harborview Medical Center employee” to gain access to an operating room in order to photograph a patient.

1 **1.4 Citations Discussed.** WAC 358-30-170; WAC 251-12-240(1); Baker v. Dep't of  
2 Corrections, PAB No. D82-084 (1983); Aquino v. University of Washington, PAB No. D93-163  
3 (1995); Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

## 6 **II. FINDINGS OF FACT**

7 2.1 Appellant Roxanne Eberhart was a permanent employee for Respondent University of  
8 Washington at Harborview Medical Center. Appellant and Respondent are subject to Chapters  
9 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 251 and 358 WAC. Appellant  
10 filed a timely appeal with the Personnel Appeals Board on August 13, 2002.

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12 2.2 Appellant began her employment with the University of Washington, Harborview Medical  
13 Center, on August 12, 1991. Appellant worked approximately seven years in Harborview Medical  
14 Center Emergency Department and had good performance evaluations. Appellant later accepted a  
15 position in the Crisis Triage Unit (CTU) of the Emergency Department. As a Medical Assistant in  
16 the CTU, Appellant was responsible for monitoring patients for safety and providing basic patient  
17 care while under the supervision of a registered nurse.

18  
19 2.3 By letter dated May 30, 2002, Appellant received a ten-day suspension, effective June 8,  
20 2002 through June 17, 2002, for neglect of duty as a result of Appellant's unauthorized absence  
21 from work during the middle of her work shift to take photographs of a plane crash in her capacity  
22 as a volunteer photographer for the fire department. (Eberhart v. University of Washington, PAB  
23 Case No. SUSP-02-0027 (2003).

24  
25 2.4 Appellant was a friend of a private attorney representing a Harborview Medical Center  
26 patient on a Labor and Industries claim. Appellant, who was also a photographer, had agreed to

1 take photographs of the patient's wounds for the attorney. Appellant had the patient sign consent  
2 forms giving her permission to take the photographs. Appellant took numerous pictures of the  
3 wounds in the patient's hospital room. Appellant's photography was unrelated to her duties and  
4 responsibilities as a Medical Assistant with the hospital.

5  
6 2.5 In June 2002, the patient was scheduled for a surgical procedure to close his wounds.  
7 Appellant agreed to photograph the upcoming surgical procedure, which required that she enter the  
8 operating room, a restricted area of the hospital. On three or four other occasions, Appellant had  
9 taken photographs of surgical procedures with the permission of the attending physicians.  
10 Appellant was aware that operating rooms were restricted areas with only authorized personnel  
11 allowed to enter. Even though Appellant was a hospital employee, she would have been considered  
12 a visitor in the operating room. Visitors to the operating room were required to obtain authorization  
13 from the attending physician and to notify the charge nurse on duty prior to entering the operating  
14 room.

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16 2.6 Appellant began to serve her suspension for the earlier discipline on June 8, which was  
17 effective through June 17, 2002.

18  
19 2.7 On June 10, 2002, Appellant entered operating room #4. Appellant was dressed in surgical  
20 scrubs and she was wearing her Harborview Medical Center employee identification tag. Appellant  
21 did not notify the attending physician, Dr. Loren Engrav, that she would be in the operating room  
22 photographing the surgical procedure nor did she notify the charge nurse on duty prior to entering  
23 the operating room.

1 2.8 After she entered the operating room, Appellant introduced herself to one of the nurses in  
2 the operating room. Appellant indicated that she was a Medical Assistant from the Emergency  
3 Department and that she was present to take photographs for the patient's attorney.

4  
5 2.9 Dr. Engrav later approached Registered Nurse 3 Kathleen Browne to find out who was  
6 taking the photographs. Ms. Browne, who was Day Shift Charge Nurse, was unaware that anyone  
7 was in operating room #4 taking photographs during the surgical procedure.

8  
9 2.10 Ms. Browne and Dr. Engrav approached the Operating Room Nurse Manager, Paula  
10 Swanson, to determine whether Ms. Swanson was aware that a photographer was in the operating  
11 room. Dr. Engrav and Ms. Browne were standing at the entrance to Ms. Swanson's office door  
12 when Appellant walked by and overheard the discussion. Appellant approached them and indicated  
13 that she was the individual taking the photographs. Appellant also indicated that she had the  
14 patient's permission to take the photographs and that the patient's wife had contacted the patient's  
15 physician, who gave permission for Appellant to enter the operating room and take the photographs.  
16 Appellant indicated she did not know the name of the physician. Ms. Swanson asked Appellant if  
17 she was working. Appellant denies that she replied, "yes," however, we find that neither Ms.  
18 Swanson nor Ms. Browne had any reason to be untruthful when they testified that Appellant  
19 indicated she was working at the time.

20  
21 2.11 Ms. Swanson directed Appellant to locate the patient's wife so they could determine who  
22 had given authorization for Appellant to enter the operating room. Appellant agreed and indicated  
23 she would return with the patient's wife. However, Appellant did not return.

24  
25 2.12 Christine Martin, Administrator for Emergency Services, was notified that Appellant had  
26 entered the operating room to take photographs without first obtaining the proper authorization.

1 Ms. Martin met with Appellant, who indicated that she was working with the attorney representing  
2 the patient on his Labor and Industries claim. Appellant again claimed that the patient's wife had  
3 assured her that she had obtained permission for Appellant to take photographs during the surgical  
4 procedure.

5  
6 2.13 On July 26, 2002, Ms. Martin wrote a memorandum recommending that Appellant be  
7 dismissed. Ms. Martin's recommendation was based on her concerns that Appellant had  
8 impersonated a working employee to gain access to the operating room to take pictures of a  
9 patient's surgery. Ms. Martin was also concerned that Appellant was on suspension from work at  
10 the time the incident occurred. Ms. Martin's recommendation was also based on her concern that  
11 Appellant was exercising extremely poor judgment.

12  
13 2.14 By letter dated July 26, 2002, Johnese Spisso, Chief Operating Officer of Harborview  
14 Medical Center, notified Appellant of her dismissal effective August 12, 2002.

### 15 16 **III. ARGUMENTS OF THE PARTIES**

17 3.1 Respondent argues that Appellant dressed like a hospital employee in order to gain entrance  
18 into one of the most protected areas of the hospital. Respondent argues that Appellant could have  
19 determined on her own who the attending physician was and could have informed the charge nurse  
20 of her purpose for being in the area prior to entering the operating room. Respondent argues that  
21 Appellant committed a serious lapse in judgment and placed a higher priority on her photography  
22 hobby rather than her responsibility to the hospital. Respondent argues that Ms. Browne and Ms.  
23 Swanson were credible when they testified that Appellant stated that she was on duty working.  
24 Respondent argues that this incident, when weighed with the incident which resulted in her 10-day  
25 suspension, warrants termination be Appellant cannot be trusted to exercise common sense.

1 3.2 Appellant asserts that she was unfamiliar with the operating room practices and procedures.  
2 Appellant asserts that she took the steps necessary to ensure that the patient's physician was aware  
3 that she would be photographing the patient. Appellant contends that the patient's wife obtained  
4 permission for her to take photographs during the surgical procedure. Therefore, Appellant asserts  
5 that she believed she was following proper protocol when she entered the operating room.  
6 Appellant also asserts that she believed she was required to wear her name tag anytime she was in  
7 the hospital, regardless of whether she was working or not. Appellant denies that she ever stated to  
8 Ms. Swanson or Ms. Browne that she was working, but admits that she told them that she was a  
9 Medical Assistant in the Emergency Department. Appellant asserts that she attempted to find the  
10 patient's wife but was unsuccessful and that she later returned to the surgical area front desk, but  
11 she did not see either Ms. Swanson or Ms. Browne. Appellant asserts that after waiting for  
12 approximately five minutes she left.

#### 13 IV. CONCLUSIONS OF LAW

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15 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.  
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17 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
18 the charges upon which the action was initiated by proving by a preponderance of the credible  
19 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
20 sanction was appropriate under the facts and circumstances. WAC 358-30-170; WAC 251-12-  
21 240(1); Baker v. Dep't of Corrections, PAB No. D82-084 (1983).  
22

23 4.3 Appellant failed to ensure that she had the proper authorization to enter the operating room  
24 on June 10, 2002 to photograph a patient. Appellant was a 12-year hospital employee, and she  
25 should have known that it was not appropriate nor professional to enter a restricted area without  
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1 first advising a staff person in charge of the area. We are not persuaded by Appellant's assertion  
2 that the patient's wife cleared her to enter the operating room.

3  
4 4.4 As a hospital employee, Appellant had a higher level of responsibility to take every possible  
5 measure to ensure that her presence in the operating room was known and acceptable to the  
6 attending physician and/or the operating room duty nurse. Furthermore, Appellant provided no  
7 evidence to substantiate or corroborate her claim that the patient's wife had obtained permission for  
8 her to enter the operating room and take the photographs.

9  
10 4.5 Finally, Appellant knew that she was on a suspension from work; however, she put on her  
11 surgical scrubs and her identification tag, entered the operating room and later stated to Ms.  
12 Swanson and Ms. Browne that she was working. Respondent has met its burden of proving by a  
13 preponderance of the credible evidence that Appellant engaged in misconduct when she failed to  
14 obtain proper authorization to enter the operating room and when she misrepresented herself as  
15 being on work status.

16  
17 4.6 Although it is not appropriate to initiate discipline based on prior formal and informal  
18 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
19 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
20 D93-163 (1995).

21  
22 4.7 In determining whether a sanction imposed is appropriate, consideration must be given to  
23 the facts and circumstances, including the seriousness and circumstances of the offenses. The  
24 penalty should not be disturbed unless it is too severe. The sanction imposed should be sufficient to  
25 prevent recurrence, to deter others from similar misconduct, and to maintain the integrity of the  
26 program. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

1  
2 4.8 Under the facts and circumstances of this case, including Appellant's prior suspension for a  
3 similar lapse in judgment, we conclude that termination was the appropriate sanction. Therefore,  
4 the appeal of Roxanne Eberhart should be denied.

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6 **V. ORDER**

7 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Roxanne Eberhart is denied.

8  
9 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

10  
11 WASHINGTON STATE PERSONNEL APPEALS BOARD

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13 \_\_\_\_\_  
14 Walter T. Hubbard, Chair

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16 \_\_\_\_\_  
17 Gerald L. Morgen, Vice Chair

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19 Busse Nutley, Member  
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